IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No.314 of 2004 (S/B)

Date of decision: 4th October, 2004

For the approval of:

Hon'ble Chief Justice V.S. Sirpurkar.

Hon'ble Mr. Justice Irshad Hussain.

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

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IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 314 of 2004 (S/B)

Dr. Dhan Singh S/o Sri Sher Singh,
R/o 216 Vasant Vihar, Phase-2,
Dehradun. …….. Petitioner

Versus

State of Uttaranchal,
Through Principal Secretary,
Horticulture, Civil Secretariat,
Dehradun & another. ……... Respondents

Mr. D.S. Patni, learned counsel on behalf of the petitioner.
Mr. K.P. Upadhyaya, learned Brief Holder for the State.

Hon. V.S. Sirpurkar, C.J.
Hon. Irshad Hussain, J.

1. Heard Mr. D.S. Patni, learned counsel appearing on behalf of the petitioner and Mr. K.P. Upadhyaya, learned Brief Holder appearing for the State.

2. This is a very strange writ petition, where the petitioner, who is a brilliant person having done his doctorate in Forestry and being in service of the respondent in the capacity of a Scientist B, challenges the advertisement dated 15.09.2004 issued for the post of scientist B. The petitioner, when he was appointed, was on the contractual basis and the essential qualifications at that time were as follows:

> "M.Sc. Ist Class with Ph.D. In Botany / Forestry / Bio-Technology / Agriculture / Bio-Chemistry or BAMS Ist Class or M.D. from recognized institute or University."

3. This appointment, also, was temporary and in the appointment order of the petitioner, it was clarified that the petitioner was appointed for three years on contractual basis on consolidated salary and with further condition that the contract was to be renewed every year. Clause (8) of this appointment order very clearly says that the

appointment, on the consolidated salary, would be completely temporary and could be terminated without any prior intimation or without showing any reason or as the case may be, at the end of the contract.

4. The petitioner accepted this and continued to serve. It is also the petitioner's case that he, then, completed his one year and so far he has not been terminated, meaning thereby, probably his contract has been renewed. However, the petitioner also does not say that there is any renewal order. Be that as it may, the petitioner has received the salary up to the month of August on his own showing.

5. So far so good, however, now a new advertisement has been published by the respondents, in which the three posts for scientist B have been advertised with following qualifications.

> "Ist Class M.Sc. in Botany / Bio-Technology and Ph.D. therein and further the post Ph.D. experience of at least one year in Medicinal and Aromatic Plants."

6. The petitioenr feels that there were only three posts of Scientist B, which are sanctioned posts in this Institution and that if all the posts are filled –up on the basis of this qualification, which is required in the advertisement, he would be ousted form the service. His predicament is that he cannot even apply for these posts since he does not have Ph.D. in either Botany or Bio-Technology and has the Ph.D. only in Forestry. In that view, the petitioner feels that he is being treated unjustly and in a discriminatory manner. Therefore, the petitioner prays for the following reliefs:

a. A writ, order or direction in the nature of certiorari quashing the advertisement dated 15.09.2004 annexed as Annexure No. 1 to this writ petition issued by Respondent No. 2 so far as it relates to appointment on the post of Scientist B in the scale of Rs. 8000-13500/- at Herbal Research and Development Institute, Dehradun.

b. A writ, order or direction in the nature of mandamus commanding the respondents to treat the petitioner as regular on the post of Scientist B in Herbal Research and Development Institute, Dehradun in the pay scale of Rs. 8000-13500/- and pay him salary regularly.

c. A writ, order or direction in the nature of mandamus to restrain the respondents from interfering in the functioning of the petitioner as Scientist B in Herbal Research and Development Institute, Dehradun.

7. We are afraid, we cannot interfere in this matter because the petitioenr, basically, has challenged the advertisement dated 15.09.2004, according to which, the petitioner also is not qualified to hold the post or to apply for it. This is apart from the fact that it is always the right of the employer to prescribe the qualifications for the post, which the employer is seeking to fill-up. Again, the petitioner does not have any right to continue in the job particularly in view of the contract of service and the conditions therein, which we have enumerated earlier. It is not for the petitioner to suggest as to what the qualifications of the post of Scientist B should be. That will be decided by the Institution, itself. If that is so, the petitioenr cannot insist on the quashing of the said advertisement merely on the ground that the advertisement, practically, excludes him from applying. IT is not the contention of the petitioenr that the advertisement is, deliberately or in a malafide manner, tailored so as to exclude him alone. Even that is not the contention in the writ petition.

8. In view of the aforesaid, the writ petition has no merits and it is dismissed.

(Irshad Hussain, J.)
04.10.2004

(V.S. Sirpurkar, C.J.)
04.10.2004

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